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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/527,924

03/17/2000

Nozomi Miura

32429

3861

116

7590

10/22/2004

EXAMINER

VUONG, QUOCHIE B

PEARNE & GORDON LLP

1801 EAST 9TH STREET

SUITE 1200

CLEVELAND, OH 44114-3108

ART UNIT

PAPER NUMBER

2685

DATE MAILED: 10/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/527,924

Applicant(s)

MIURA, NOZOMI

Examiner

Quochien B Vuong

Art Unit

2685

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 September 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 16 and 17.

Claim(s) objected to: 3 and 10.

Claim(s) rejected: 1, 8, 9 and 15.

Claim(s) withdrawn from consideration: 2, 4-7 and 11-14.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Response to Arguments

1. Applicant's arguments filed 09/01/2004 have been fully considered but they are not persuasive.

Regarding claims 1, 8, 9 and 15, applicant argues Gottfried et al. and Furukawa et al. fail to teach the claimed invention. The examiner does not agree with the applicant. Gottfried et al. (figure 1) already disclose an automatic gain control circuit comprising: a gain variable amplifier (item 14) which controls an amplitude of a receiving signal based on a control signal (column 3, lines 11-14); **control signal generating means** (items 40 and 22) **for level-detecting the receiving signal and then generating a feedback signal as the control signal for the gain variable amplifier** (column 3, line 55- column 4, line 5). Gottfried et al. fail to disclose averaging the detected receiving signal level for a predetermined time. Examiner uses Furukawa et al. (figures 4-5) as a secondary reference for disclosing a **receiving signal level is averaged for a predetermined time** (column 9, lines 13-23, 36-55). And it would have been obvious for one having ordinary skill in the art at the time the invention was made to adapt the teaching of Furukawa et al. for averaging the received signal over a predetermined time to Gottfried et al. for reducing the measuring error of the received signal level and properly controlling the gain of the variable amplifier. Thus, the combination of Gottfried et al. and Furukawa et al. teach all of the limitations of claims 1, 8, 9, and 15.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by

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combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, one of ordinary skill in the art having both Gottfried et al. and Furukawa et al. references in front would be motivated to combine the teaching of Furukawa et al. for averaging the received signal over a predetermined time to Gottfried et al. for reducing the measuring error of the received signal level and properly controlling the gain of the variable amplifier.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quochien B Vuong whose telephone number is (703) 306-4530. The examiner can normally be reached on M-F 9:30-18:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Urban can be reached on (703) 305-4385. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



QUOCHIE B. VUONG
PRIMARY EXAMINER

Quochien B. Vuong

Oct. 12, 2004.